



City of Westminster

Committee report

General Purposes Urgency Sub-Committee

Date: **19 January 2012**

Classification: **For General Release**

Title of Report: **Results of Consultation and Authority to Proceed with:**

- i. Making Byelaws to Regulate Tents and Other Structures and Sleeping Equipment in Designated Areas in the City of Westminster; and**
- ii. Amending existing Byelaws to enable seizure of noise equipment.**

Report of: **Report of Strategic Director for City Management and Head of Legal and Democratic Services**

Wards involved: **St. James's**

Financial summary: **There are no direct financial implications in relation to this report**

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1. Executive Summary

- 1.1. Under the Local Government Act 1972, local authorities are empowered to make their own Byelaws for Good Rule and Government and the suppression of nuisances. On 7 December 2011 the General Purposes Urgency Sub-Committee authorised the necessary procedures to be carried out with a view to making new Westminster Byelaws, the purpose of which is to prohibit the use of any equipment for sleeping (such as tents or similar structures) in designated areas in the City and, in particular, in areas around Parliament Square. In addition, the proposed Byelaws would amend existing Byelaws which control the use of amplified noise equipment so as to enable the seizure and forfeiture of that equipment when an offence is committed in breach of those Byelaws. The aim of the proposals is to ensure the designated areas can be enjoyed by all sectors of the community. The proposals would not prevent protests from taking place in Parliament Square or any other part of the City.
- 1.2. This report should be considered in conjunction with the original report to the General Purposes Urgency Sub-Committee on 7 December, which is attached as Appendix 1 together with the addendum report, which will be prepared after the consultation period has ended. The addendum report will provide details of and comment on the responses to the consultation and consider in greater detail on the rationale for making byelaws, in the light of consultation responses.
- 1.3. The Urgency Sub-Committee authorised consultation to take place on a draft set of Byelaws that was circulated round the table on 7 December 2011. These were materially different to the draft set attached to the report for that meeting. In particular, there had been significant changes to the proposed designated areas. The committee's particular attention is drawn to the inclusion of the area surrounding the Home Office at Marsham Street. This area was included at the request of the Home Office. The rationale for including this area will be considered further in the addendum report in the light of consultation responses. The current version of the draft Byelaws which has been used for the consultation exercise is attached as Appendix 3. The plan (which sets out the proposed designated areas) is attached as Appendix 4.
- 1.4. In accordance with the decision of the General Purposes Urgency Sub-Committee taken on 7 December 2011, the City Council has undertaken a consultation exercise on the proposals. This consultation seeks views from a range of interested parties, including local residents, businesses and the protestors themselves, on the proposal to make new Byelaws, the specific provisions being proposed, and the proposed designated areas. The consultation exercise commenced on 8 December 2011 and ends on Friday 13 January 2012.
- 1.5. The purpose of this report is to place the matter on the agenda for the Committee's consideration. As mentioned above, the addendum report to follow will deal with the responses to the consultation and contain officer's recommendations.

2. Recommendations

- 2.1. That this report be considered in conjunction with the addendum report which will make recommendations in the light of responses to the consultation.

3. Consultation

- 3.1. A copy of the consultation document and the explanatory note that was attached to the consultation document is attached as Appendix 5 to the report. The consultation closes on 13 January 2012 which is two days after this report had to be published. The addendum report referred to above will be submitted to all members of the Sub-Committee on 18 January, for review and consideration in advance of the meeting.
- 3.2. Members of the Sub-Committee will need to consider the responses to the consultation document to determine whether or not to recommend to the Full Council that the Byelaws be made. If Members decide to make such a recommendation, consideration will also need to be given to whether any amendments should be made, either to the Byelaws themselves or to the proposed designated areas. It is not possible to add any new designated areas at this stage of the procedure without carrying out a further consultation exercise.

4. Procedure

- 4.1. It is considered to be expedient for any Byelaws that may be agreed by the Council to come into effect at the earliest opportunity as the intention is for the Byelaws to complement the specific provisions relating to Parliament Square itself contained in Part 3 of the Police Reform and Social Responsibility Act 2011. Part 3 came into force on 19 December 2011.
- 4.2. The DCLG normally requires an application to be made for provisional approval of the Byelaws before any decision is taken by the Council to actually make the Byelaws. The purpose of provisional approval is for the DCLG to satisfy itself that the Byelaws meet the judicial tests for the validity of Byelaws, having regard also to the responses to the consultation exercise. Essentially, the Byelaws must be reasonable, certain in their terms, consistent with the general law and intra vires the authority which makes them. On this occasion, however, there has already been extensive discussion with the DCLG. They have seen a copy of the draft Byelaws and have given informal provisional approval to them. This should not be taken as an indication that the DCLG will automatically confirm the Byelaws as (i) the DCLG has not seen the responses to the consultation exercise and (ii) the DCLG has to take into consideration any representations that may be received in response to the notice of the making of the Byelaws that has to be inserted into a local newspaper.
- 4.3. If the Sub-Committee recommends that the Council should proceed to make the Byelaws and the Full Council agrees with that recommendation, the next step would be for the Byelaws to be sealed, after which the City Council must publish notice of the new Byelaws in a local newspaper for a period of one month. The City Council will also hold copies of the Byelaws on deposit at Council offices and libraries in

order that they are available for public scrutiny. Subject to the Council making the Byelaws, it is currently anticipated that a notice can be placed in a local newspaper on Friday, 3 February 2012. The last date for representations to be made to the DCLG will then be Friday, 2 March. The application for confirmation will hopefully be made in the week commencing on Monday, 5 March. The Secretary of State will determine the date when the Byelaws are to come into force. If the Byelaws are made by the Council and confirmed by the Secretary of State, it is currently anticipated that they will come into force at some time in March 2012. .

- 4.4. In the meantime work can progress to support implementation at the operational level. This will include development of an agreed enforcement protocol between WCC, the Greater London Authority and the Metropolitan Police Service, and formal authorisation of relevant officers to take enforcement action if and when required. Members of the Sub-Committee may be aware that two of the protestors who currently occupy the footway around Parliament Square have issued Judicial Review proceedings against the Council and one of them has obtained an injunction restraining the Council from enforcing Part 3 of the Police Reform and Social Responsibility Act 2011. For the avoidance of doubt, this does not relate to the proposed Byelaws which are designed to complement that legislation. However, it is relevant in that the challenge is based on an assertion that Part 3 is incompatible with the Human Rights Act. It follows that a similar challenge may be made to either the making of our Byelaws, to their confirmation by the Secretary of State if they are made and confirmed, or any attempt to enforce them. This issue will be addressed further when responses to the consultation exercise have been considered.

5. Financial implications

- 5.1. There are no direct financial implications.

6. Legal Implications

- 6.1. The legal implications of the proposed new Byelaws were dealt with in the original report to the Sub-Committee on 7 December 2011 and also in the body of this report. Further legal advice will be provided as necessary in the light of responses to consultation.

7. Human Rights Implications

- 7.1. The human rights implications of the proposed Byelaws are dealt with in the original report to the General Purposes Urgency Sub-Committee dated 7 December 2011, and above.

8. Equalities Implications

- 9.1 The Public Sector Equality Duty came into force on 5 April 2011(pursuant to section 149 of the Equalities Act 2010). The Equality Duty has three aims. It requires public bodies to have due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act; (b) advance

equality of opportunity between people who share a protected characteristic and people who do not share it; and (c) foster good relations between people who share a protected characteristic and people who do not share it.

- 9.2 In accordance with the Public Sector Equality Duty, an Equalities Impact Assessment (EIA) has been carried out in relation to this project. The EIA was published alongside the other consultation documents and will continue to be available on the WCC website. It is considered that the implementation of the proposed Byelaws will impact on all persons without distinction and that there is no potential to cause unlawful discrimination. A copy of the EIA was circulated to members of the General Purposes Urgency Sub-Committee on 7 December 2011, but a further copy is attached to this report as Appendix 6

10. Crime and Disorder Act 1989

- 10.1. Under Section 17 of the Crime and Disorder Act 1988, a Local Authority has a duty to “exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime and disorder in its area”. The Byelaws have been specifically designed to complement the powers available in Parliament Square itself pursuant to Part 3 of the Police Reform and Social Responsibility Act 2011. These powers enable the police and authorised officers of the local authority to give directions to persons to cease engaging in various prohibited activities or not to start such activities. This element of discretion ensures that there is a mechanism in place for people to avoid criminal liability. However, a failure to comply with such a direction is an offence.

11. Ward member consultation

- 11.1. Ward members have been consulted on the proposals and have had sight of the original report attached as Appendix 1. All have expressed their support for the proposals.

Appendices

APPENDIX 1 – Report to the General Purposes Urgency Sub-Committee – *Authority to make Byelaws to Control the Use of Tents and Sleeping Equipment in Designated Areas surrounding Parliament Square and to amend existing Byelaws to enable seizure of noise equipment* – 7 December 2011.

APPENDIX 2 – City of Westminster draft Byelaws to regulate tents and other structures and sleeping equipment in designated areas in the City of Westminster and to amend existing Byelaws to enable seizure of noise equipment.

APPENDIX 3 – Plan attached to draft Byelaws showing the proposed designated areas.

APPENDIX 4 – Copy of the consultation document and explanatory note.

APPENDIX 5 – Copy of the Equalities Impact Assessment.



City of Westminster

Committee report

	General Purposes Urgency Sub-Committee
Date:	7 December 2011
Classification:	For General Release
Title of Report:	Authority to make Byelaws to Control the Use of Tents and Sleeping Equipment in Designated Areas surrounding Parliament Square and to amend existing Byelaws to enable seizure of noise equipment
Report of:	Report of Strategic Director for City Management and Head of Legal Services
Wards involved:	St. James's
Financial summary:	There are no direct financial implications in relation to this report
Report Author:	Leith Penny
Contact details	lpenny@westminster.gov.uk

1. Executive Summary

- 1.1. Under the Local Government Act 1972, local authorities are empowered to make their own Byelaws for Good Rule and Government and the suppression of nuisances. This report is seeking authorisation to carry out the necessary procedures and consultation with a view to making new Byelaws under these provisions. If implemented, the proposed Byelaws will prohibit the use of any equipment for sleeping (such as tents or similar structures) in a designated area surrounding Parliament Square. In addition, the proposed Byelaws will amend existing Byelaws which control the use of amplified noise equipment so as to enable the seizure and forfeiture of that equipment when an offence is committed in breach of those Byelaws. The draft proposed Byelaws are attached as Appendix 1.
- 1.2. The proposed Byelaws complement the specific provisions relating to Parliament Square contained in Part 3 of the Police Reform and Social Responsibility Act 2011.
- 1.3. The proposals in this report have the support of the Cabinet Member for City Management. Ward members will be consulted as part of the formal consultation that will follow if the decision is made to proceed with initiating the Byelaws process.

2. Recommendations

- 2.1. That the Sub-Committee authorises the Strategic Director for City Management and the Head of Legal Services to carry out the necessary procedures with a view to making new Byelaws as set out in Appendix 1, with a designated area surrounding Parliament Square as set out in the plan attached at Appendix 2.
- 2.2. That the Sub-Committee authorises the Strategic Director for City Management to consult with ward councillors, land owners (including Westminster Abbey), local businesses and other persons who may have an interest in the Byelaws, making any amendments as appropriate, and thereafter to seek provisional approval (if required) from the Department for Communities and Local Government (DCLG) for the making of those Byelaws.

3. Reasons for Decision

- 3.1. To enable the legal procedures to be carried out with a view to the Council making new Byelaws to prohibit the use of tents and sleeping equipment etc in a designated area surrounding Parliament Square and to amend existing Byelaws which control the use of amplified noise equipment so as to enable the seizure and forfeiture of that equipment when an offence is committed in breach of those Byelaws.

4. Background

- 4.1. The City Council recognises all individuals' right to protest peacefully, in accordance with the European Convention of Human Rights (ECHR) and other legislation. However, under certain circumstances the extent and manner of such protest can

have a disproportionate effect on amenity and the rights of the general public to the peaceable enjoyment of the public realm.

4.2. As the seat of government and an internationally recognised symbol of London and the country as a whole, the Parliament Square area is perhaps Westminster's most iconic site, attracting millions of tourists every year. The Palace of Westminster has been a grade 1 listed building since 1970, while the open space of Parliament Square Gardens is grade 2 listed. In 1987, together with Westminster Abbey including St Margaret's church; it also became listed as a UNESCO World Heritage Site, in recognition of the outstanding universal architectural, historic and symbolic significance of this group of buildings and spaces.

4.3. In a situation that has developed and persisted over several years, groups of individuals have settled as a round-the-clock presence in the Parliament Square area, carrying out their protests whilst living in permanent encampments.

4.4. Responsible Authorities and their Roles

4.4.1. There are a number of different authorities with responsibility for managing different parts of Parliament Square and the surrounding area, the key ones being the Greater London Authority (GLA), Royal Parks, and Westminster City Council (WCC). The GLA has statutory responsibility for management and maintenance of Parliament Square Gardens, on behalf of the landowner, The Crown Estates. Meanwhile, as the local authority WCC takes primary responsibility for management of the public highways in the area, including the areas of highway immediately adjacent to Parliament Square Gardens, on the 'central island'. The GLA and WCC take responsibility for enforcing any Byelaws that they make in the areas under their management. Meanwhile, The Royal Parks Agency has its own regulations which it is responsible for enforcing on all areas of land it manages. Within the vicinity of Parliament Square, this includes much of Victoria Tower Gardens.

4.4.2. The Metropolitan Police Service (MPS) also has a role. Their core duties are to keep the peace, prevent and detect crime and protect life and property. The MPS can and will support the enforcement role of WCC and GLA, in respect of any Byelaws that apply. Relevant police powers will be used as proportionate and necessary, for example in keeping the peace and ensuring WCC or GLA officers do not become victims of crime in the course of their enforcement duties. MPS officers will also support the enforcement of WCC or GLA Byelaws by providing supporting evidence, contributing witness statements, or assisting in the seizure of items if necessary.

4.5. History of Encampments at Parliament Square

4.5.1. The 24 hour presence of protestors camping opposite the House of Commons has been a familiar sight in Parliament Square for over a decade. In June 2001 the late Mr Brian Haw set up camp on the central island of Parliament Square, to protest about government policy in Iraq. In 2002 The City Council sought an injunction against Mr Haw, on grounds of alleged unlawful obstruction of the highway¹. This action was taken in an attempt to address the issue of

¹ Pursuant to section 130 of the Highways Act 1980.

obstruction of the pavement by tents and placards, and was not based on any wish to interfere with Mr Haw's right to protest per se.

- 4.5.2. The injunction application was not successful, on the grounds that, while it was accepted that Mr Haw's equipment was causing an obstruction, it was not considered proportionate, in view of Mr Haw's rights under article 10 of the ECHR, to require its removal. Mr Haw remained encamped in Parliament Square on a 24 hour basis, eating and sleeping at the site, with all his placards and equipment still in place.
- 4.5.3. In 2005 the Serious Organised Crime and Police Act (SOCPA) came into force. This act created a new offence of demonstrating without authorisation in a 'designated area'. This area was defined by an Order, but had to be within one kilometre of Parliament Square. The legislation meant that although anyone could legally demonstrate within the designated area, they could only do so with the express permission of the then Metropolitan Police Commissioner. The Commissioner may, if considered necessary and appropriate, impose conditions on those organising or taking part in the demonstrations with the aim of preventing serious public disorder, harm to property, hindrance of the operations of Parliament or Parliamentary personnel, or on account of security risks. The 2005 Act also banned the use of 'amplified noise equipment' (loudspeakers and loudhailers) in the designated area though there was a mechanism by which consent could be granted by the Council pursuant to the Noise and Statutory Nuisance Act 1993.
- 4.5.4. The provisions of SOCPA were subject to challenge from the start. There were ambiguities around what the police could regard as a 'demonstration' and attempts were made to overwhelm the police authorisation process by applying for large numbers of simultaneous 'lone protests'.
- 4.5.5. In addition, Brian Haw successfully argued that the provisions of the Act did not apply to him, as it was not retrospective and his demonstration had been in place well before the legislation came into force. This was overturned at appeal in 2006, but Mr Haw had by then applied for police authorisation and was permitted to continue with his ongoing 24 hour protest, with certain conditions.
- 4.5.6. In April 2009, Tamil protestors staged a demonstration at Parliament Square which ended up lasting several weeks. Although the demonstration was initially unauthorised, permission was later sought and obtained for 50 people to protest in the Square. However, the number of individuals present frequently exceeded that number, often by hundreds or even thousands.
- 4.5.7. Significant concerns were raised about the inconvenience caused to Members of Parliament and the public by these large scale protests. This highlighted the weaknesses of the SOCPA legislation, to the point where it was concluded by government that "a compulsory prior notification scheme is impractical"².
- 4.5.8. By early 2010 the existing protest site had been joined by a large group of other individuals, forming a large scale encampment on the grass of Parliament

² *The Government Reply to the Seventh Report of the Joint Committee on Human Rights Session 2008-09 HL Paper 47, HC 320 'Demonstrating respect for human rights? A human rights approach to policing protest' – Cm 7633, May 2009.*

Square, calling itself 'Democracy Village'. In June of that year the Mayor of London successfully sought a possession order, resulting in the removal of a number of individuals from the grass area in the centre of the Square. The protestors moved off the grass area to comply with the order and a temporary fence was erected to prevent further access to the space controlled by the GLA. The protestors, thus displaced, relocated their tents onto the pavement on the central island (joining others who may already have been there). Legal action to this date has therefore only displaced, rather than satisfactorily resolved, the issue.

4.6. The Current Situation

4.6.1. The current situation is that a number of protesters continue to camp out on a 24 hour basis on the pavement around Parliament Square Gardens. There are a number of tents and placards in place, plus two fairly large cubic structures. This situation continues to damage the visual amenity of the area, at one of the city's most sensitive locations, and obstruct the pavement itself. The Council is currently engaged in litigation to seek an injunction against those protestors under the Highways Act 1980.

5. Legislation and Enforcement Options

5.1. The Police Reform and Social Responsibility Act 2011

5.1.1. With the aim of fulfilling "the Government's publically stated commitment to restore rights to non-violent protest" while seeking "to address concerns about encampments and other disruptive activity on Parliament Square which have prevented the public from using the Square"³, Part 3 (sections 141-149) of the Police and Social Responsibility Act (PRsRA) was drafted to contain provisions for the management of protests at Parliament Square. These provisions effectively repeal and replace the provisions of the SOCPA which relate to protests in the area. The relevant sections of the PRsRA prohibit specific types of activity include sleeping or camping, as well as using loudspeakers or loudhailers. The controlled area defined within the Act is a relatively small space, covering only the grassed area of Parliament Square Gardens and the immediately adjacent footways, together making up the central island. This will be enforced by the responsible authority – in the case of Parliament Square Gardens, the Greater London Authority; and in the case of the two adjacent areas of footway, Westminster City Council.

5.1.2. It was stated as the Government's intention, during the passage of the Bill, that other parts of the surrounding area be regulated by a City Council byelaw containing equivalent provisions to those contained in the PRsRA, in order that effective management of the entire Square and its immediate environs could be secured. During a debate of the House of Commons Public Bill Committee on 15th February 2011, James Brokenshire, the Parliamentary Under-Secretary of State for the Home Department said; "We want to ensure that the area where the new regime applies is as small as possible so that it targets the problem of the

³Full Equality Impact Assessment for New measures on Parliament Square Garden and the surrounding area in the Police Reform and Social Responsibility Bill, Home Office Public Order Unit, April 2011

unique situation of Parliament square, without extending matters further than necessary to strike a focused and proportional balance. However, we recognise worries that the controlled area is small by its nature and that the effect of such measures could displace disruptive activities to footways beyond the controlled area. Displacement is a risk, and I do not underestimate the determined individuals who will be looking at different ways to challenge new measures that we seek to bring into force. We have been working with Westminster City Council and the GLA to ensure that relevant Byelaws are strengthened to deal with disruptive activity in the wider area”.

5.2. The City Council’s Existing Powers

5.2.1. The areas outside the boundaries of the controlled area are not covered by the powers bestowed by the PRSRA. The authorities responsible for managing these areas have limited powers available to manage the issue of permanent encampments. Westminster City Council has explored a number of options over the years in order to address the use of Parliament Square for 24 hour protests and encampment. In terms of currently available legislation, WCC has considered its powers under each of the following:

- Highways Act 1980 – unlawful obstruction of the highway. Our unsuccessful application for an injunction against Mr Haw in 2002 demonstrates the difficulty in enforcing this legislation where to do so might interfere with an individual’s right to protest. The Council has now issued further proceedings against 10 named persons and other persons unknown seeking an injunction against them for obstruction of the highway. The matter is set down for hearing during the week commencing 12 March 2012. This is different to the case against Mr Haw in 2002 as the Council is now alleging obstruction due to the cumulative impact caused by the numbers of people on the footways surrounding Parliament Square Gardens. Although the Council is confident that it will be successful in those proceedings, considerable delay is caused by the litigation process itself. The proposed Byelaws will enable immediate action to be taken to remove any tents or camping equipment etc.
- Noise legislation – the City Council has powers under the Environmental Health Act for enforcing against those who create a statutory noise nuisance. However, these powers cannot be applied to political demonstrations. Existing Westminster Byelaws do contain some provisions relating to noise, but the penalties are minimal and, even if successful, such enforcement would not address the issue of encampment. Moreover, our existing Byelaws do not include any power to seize the noise equipment being used.
- Crime and Disorder Act – save for isolated incidents, there has been no evidence to suggest that the protests meet the criteria for enforcement through Anti Social Behaviour Orders.
- Public Order Act – similarly, enforcement under the Public Order Act requires the words, actions or displayed materials or signs of the individuals to be threatening, abusive or insulting. This is not the nature of the current protests in Parliament Square.
- Trafalgar Square and Parliament Square Garden Byelaws (2000) – these existing Byelaws do prohibit camping without the permission of the Mayor of London. However, they do not allow for the seizure of items used for these purposes, save for any items

being used for the purposes of unlicensed street trading. Any effective enforcement under these Byelaws may therefore require protracted action through the courts before removal is achieved.

- Serious Organised Crime and Police Act (2005) – as discussed, various weaknesses in this legislation limit its effectiveness in preventing encampment and other activities that cause long term detriment to proper and peaceful enjoyment of the area by the general public. This is borne out by the decision to repeal the SOCPA provisions with Police Reform and Social Responsibility Act this year.

5.3. The Need for New Byelaws

- 5.3.1. As can be seen from the above section of this report, existing legislation does not provide the Council or the landowners within the vicinity of Parliament Square with the necessary powers to immediately secure the removal of unauthorised encampments from the highway or other public and/or private land which can easily be accessed by the general public. By way of example, it may be the case that encampments which may be set up on the highway will not amount to an unlawful obstruction of the highway. That will depend on all the circumstances of the individual case, including the nature and extent of the obstruction, the width of the highway itself and the length of time that the potential obstruction continues. However, even if the encampment does constitute an unlawful obstruction of the highway it is most unlikely that the Council or the police will have the power to immediately remove the tents and bedding equipment etc used to assist people in sleeping overnight. That would only be possible if the encampment constituted a danger to the public.
- 5.3.2. The situation is slightly different if a person uses amplified noise equipment in the proposed designated area. The approach for Parliament Square itself is that such equipment cannot be used but discretion must still be exercised before a Direction is given to that effect. Moreover, there is a means to seek an authorisation to use such equipment. In the proposed designated area surrounding Parliament square the approach will be different. Amplified noise equipment can be used without authorisation provided it doesn't breach other legislation, such as section 62 of the Control of Pollution Act 1974 (which prevents the use of such equipment between the hours of 9 pm and 8 am). However, the Council wants to ensure that it has the appropriate powers to immediately deal with the use of any amplified noise equipment that causes a nuisance to persons in the neighbourhood. Our existing Byelaws contain such a power but they do not include a power to seize the equipment. It is the power of seizure that is crucial to being able to take effective enforcement action to prevent the nuisance from continuing.
- 5.3.3. The drafting of new Byelaws for Good Rule and Government presents the City Council with an opportunity to establish powers of control that are comparable to those bestowed by the PRSRA, in accordance with the declared intentions of Government to achieve an effective management regime for the entirety of the Square and its environs..
- 5.3.4. The power to make Byelaws under the Local Government Act 1972 is contingent upon the issue the authority means to address being not already covered by general legislation or any local Act, and it not being possible for them

or another authority to make Byelaws or take any other action under any other provision. As demonstrated above, it is considered that a proposal to make Byelaws to manage the issue of encampments surrounding Parliament Square would meet these requirements.

6. The Proposed Westminster Byelaws

6.1. Provisions

- 6.1.1. The proposed Byelaws have been drafted to match as closely as possible the PRSRA provisions that apply to the central island, which have already been debated and agreed by Parliament. That is to say, the proposed Byelaws empower the City Council to direct individuals to cease any of a range of activities, including using (or starting to use) any sleeping equipment, or erecting a tent or other structure “for the purposes of facilitating sleeping or staying”⁴.
- 6.1.2. The Byelaws make it an offence to fail to cease such activities after a direction has been given by the police or an authorised Council officer. The penalty for contravention of the Byelaws is liability on summary conviction to a fine not exceeding level 2 on the standard scale (up to £500). The Byelaws also provide authorised officers with a power of seizure, whereby they may seize any prohibited item (e.g. sleeping equipment), retaining it for a maximum of 28 days or until the conclusion of proceedings against the individual for an offence, if such proceedings are undertaken.
- 6.1.3. The proposed Byelaws do not include provision to enable a direction to be given regarding the operation of amplified noise equipment (including loudspeakers and loudhailers) in the proposed designated area. Consequently, there is no provision allowing an application to be made in that area for the authorisation of such equipment. Instead, a provision has been included which will amend existing Byelaws that apply to the whole of Westminster. These Byelaws already allow action to be taken in respect of the use of such equipment which is considered to be unreasonable. This means that discretion has to be exercised before a person is told to stop using the equipment and no offence is committed unless that instruction is ignored. The proposed amendment to the Byelaws will also allow the equipment to be seized if an offence is committed.
- 6.1.4. A full copy of the proposed Byelaws is attached as Appendix 1.

6.2. Designated Area

- 6.2.1. Like the provisions under the Police Reform and Social Responsibility Act, the proposed Westminster Byelaws for Good Rule and Government will apply only within a designated area. As indicated by the map attached as Appendix 2, the proposed designated area will cover an area surrounding Parliament Square itself (excluding the central island space which is managed separately by the existing PRSRA provisions), and extends some way down the surrounding streets, to include those areas within the vicinity of the Square which may be considered

⁴ *City of Westminster draft Byelaws* to regulate tents and other structures and sleeping equipment in designated areas near Parliament Square etc. clause 3(2)(a)(ii).

vulnerable to the establishment of unauthorised encampments. This may be due to displacement of those persons who are currently camping on the footways adjacent to the Square itself or due to new encampments that may appear.

6.2.2. The boundary to the south west of the designated area covers a portion of Victoria Street and the surrounding space, to encompass the Queen Elizabeth II Conference Centre and Westminster Abbey. This has been done in recognition of the particular vulnerability of these areas in the event that encampments displaced from the central island seek alternative locations in the vicinity, offering as they do wide expanses of available space within direct line of sight of Parliament Square.

6.2.3. Without inclusion in the City Council's proposed Byelaws, the Abbey would have no powers other than those of a private land owner to manage this likely influx. The area to the front of the Abbey and Dean's Yard to the rear (also Westminster Abbey-owned land), have therefore been included in the designated area to reinforce the enforcement position at these locations. This is being done in close consultation with the Abbey.

6.2.4. The current agreement is that largely WCC would enforce the proposed Byelaws on this privately-owned but open land in exactly the same way as it would on the public highway areas within the designated area. However, one key additional provision will apply, so that individuals may carry out activities that would normally be considered to be contrary to the proposed Byelaws if they are doing so with the express permission of the Abbey itself. This allows for organised vigils or other such activities which the Abbey may wish to accommodate.

6.3. Enforcement

6.3.1. Westminster's proposed Byelaws for Parliament Square would be enforced on the ground by the Westminster Wardens service, within City Management, and by the police. As previously stated, enforcement takes the form a direction (written or verbal) which, if not complied with, can lead to seizure of prohibited items and a court summons and potential fine up to £500. The precise details of an enforcement protocol are still under discussion between Westminster City Council, the GLA and the MPS, and will be subject to written agreement to ensure a coordinated and consistent approach.

6.3.2. What is understood at this stage, though, is that operational enforcement activity will fall into two categories: removal of the existing encampment on the footways adjacent to Parliament Square Gardens, and 'business as usual' enforcement to retain control of the wider area once the existing encampment is cleared.

6.3.3. All of the relevant authorities are keen to take a proportionate enforcement approach and avoid criminalising people unnecessarily, so the intention is to first advise individuals that they have or are about to commit an offence under the PRSRA or relevant byelaw and that if they do not cease the activity they will be subject to a formal warning or direction. If they comply at this stage, no further action will be taken. However, if compliance is not achieved, the second stage will

be for the police or other authorised officer to obtain the individual's name, at which point the officer may seize prohibited items. If not already present, the presence of the police may be required at this point, as they (unlike Council officers) are authorised to use reasonable force if required, in order to seize items or verify individuals' names or addresses.

6.3.4. It is important to note that all Byelaws for Good Rule and Government are enforced with an element of professional discretion on the part of the authorised officer. This means that in any given situation the officer may decide whether to take enforcement action or not. This supports police and Council officers to manage problematic behaviour in a proportionate manner, without criminalising people unnecessarily.

6.3.5. In order to support operational coordination and further safeguard consistency, it is obviously important that each of the authorities responsible for sections of land in and around Parliament Square ensure their respective regulations align with and complement each other. Westminster City Council, the GLA and Royal Parks are working together to ensure that the provisions of the PRSRA that are enforced by the GLA on the central island, are mirrored by both the Byelaws WCC propose for the designated area shown in Appendix 2, and the regulations enforced by Royal Parks to maintain order in their open spaces. In this way the responsible authorities hope to collectively deliver a robust and effective solution for the whole area.

7. Procedure

7.1. This section of the report outlines the procedures that will take place if the recommendations in this report are approved.

7.2. Proposed new Byelaws for Good Rule and Government must be confirmed by the Department for Communities and Local Government (DCLG). This is usually preceded by an application to DCLG for provisional approval of the proposed Byelaws. Because there is a desire to bring Byelaws into force as soon as possible after the Part 3 of the Police Reform and Social Responsibility Act 2011 is implemented, discussions are taking place with Central Government to ascertain whether the DCLG will be prepared to dispense with the need for provisional approval on this occasion. Provisional approval is not a statutory requirement. DCLG have been sent a draft copy of the Byelaws and are fully aware of the purpose of the Byelaws bearing in mind the ongoing discussions that have taken place.

7.3. If the recommendations in this report are approved, Westminster City Council will initiate a full consultation exercise which will allow representations to be made to the Council until Friday 13 January. The results of that consultation will then be presented back to another General Purposes Urgency Sub-Committee for further consideration. The Urgency Sub-Committee will be asked to decide whether or not to recommend to the Full Council that the Byelaws are made and sealed.

7.4. If the General Purposes Urgency Sub-Committee decides to recommend to the Full Council that the new Byelaws are made and sealed, a report will be submitted to that effect to a meeting of the Full Council on 25 January 2012. If the Full Council agrees the recommendation, the Byelaws will be sealed and a notice will be placed in a local

newspaper setting out the Council's intention to apply to the Secretary of State for confirmation. The notice will allow objections to be made to the DCLG for a period of one month. Copies of the Byelaws will also be held on deposit at offices of the Council for inspection by members of the public.

- 7.5. If the Council does agree to make the Byelaws an application will eventually be made to the DCLG for confirmation. The current timetable suggests that such an application can be made in the first week of March 2012. The Secretary of State will then decide whether to confirm the Byelaws having regard to any objections that are received. The Byelaws are either confirmed or rejected by the Secretary of State. They cannot be amended. If confirmed, the Secretary of State will determine when they are to come into effect. If the Byelaws are confirmed, the Council will ask for them to be brought into force at the earliest opportunity.

8. Financial implications

- 8.1. There are no direct financial implications.

9. Legal Implications

- 9.1. The main legal implications of the proposed new Byelaws are dealt with in the body of this report.
- 9.2. One further issue, though, relates to the power of seizure. The City Council's power to seize prohibited items in the course of enforcing its new Byelaws (if approved), is derived from section 150 of the Police Reform and Social Responsibility Act 2011. The Act received Royal Assent on 15 September 2011, but the associated regulations bringing various provisions into force have not yet been made. The Council's power to seize items under the proposed Byelaws for the designated area surrounding Parliament Square is therefore dependent on the appropriate commencement orders coming into force either before, or simultaneously with, the Byelaws themselves.

10. Human Rights Implications

- 10.1. The Byelaws have been specifically designed to complement the powers available in Parliament Square itself pursuant to Part 3 of the Police Reform and Social Responsibility Act 2011. These powers enable the police and authorised officers of the local authority to give directions to persons to cease engaging in various prohibited activities or not to start such activities. The Byelaws do not prevent protest (which will be specifically allowed when sections 132 to 138 of the Serious Organised Crime and Police Act 2005 are repealed) but are designed to deal with the erection of tents and the use of other equipment which enables persons to sleep overnight in the designated areas identified. This type of activity is considered to be disruptive as the permanent nature of an encampment prevents Parliament Square and the areas surrounding Parliament Square from being available to the public at large.

- 10.2. The Byelaws are designed as a proportionate response to potential problems that might arise if protestors decide to set up camp in any of the streets or other places identified within the designated area surrounding Parliament Square. In addition, the Byelaws amend the Council's existing Byelaws for Good Rule and Government (No.2) which already allow measures to be taken to prevent the use of amplified noise equipment. The amendment will allow the seizure and forfeiture of such equipment in all areas of the City of Westminster. These are discretionary powers which seek to ensure that there is a means to take immediate action to prevent the nuisance from continuing. This amendment is designed to maintain order and to protect the rights and freedoms of residents, local businesses and visitors within the City.
- 10.3. The Byelaws do not automatically prohibit the erection or use of tents or other camping equipment etc. Discretion has to be exercised by the appropriate enforcement agencies, who will do so having regard to a protocol developed between them. When discretion is exercised, a direction will be given to cease the prohibited activity or not to start the prohibited activity and no offence will be committed unless an individual chooses to ignore the direction. Even then, no offence will be committed if the person has a reasonable excuse for not complying with the direction.
- 10.4. In assessing compliance with the Human Rights Act 1998, the Council must obviously have regard to the fact that it is proposing to designate a wider area than Parliament Square itself. The relevant articles of the ECHR are the right to peaceful assembly (article 11); the right to freedom of expression (article 10) and the right to freedom of thought, conscience and religion (article 9). Having regard to the reasons given in the report for the making of the Byelaws and the fact that these proposals having nothing to do with the right of protest per se (which are specifically being restored by the repeal of sections 132 to 138 of SOCPA), it is considered that the proposals constitute a proportionate means of achieving a legitimate objective. To the extent that the proposals do interfere with the rights expressed in articles 9, 10 or 11, it is considered that the interference is necessary for the protection of the rights and freedoms of others. Consequently, the Byelaws are considered to be compatible with the Human Rights Act 1998.

11. Equalities Implications

- 11.1. The Public Sector Equality Duty came into force on 5 April 2011 (pursuant to section 149 of the Equalities Act 2010). The Equality Duty has three aims. It requires public bodies to have due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act; (b) advance equality of opportunity between people who share a protected characteristic and people who do not share it; and (c) foster good relations between people who share a protected characteristic and people who do not share it.
- 11.2. In accordance with the Public Sector Equality Duty, an Equalities Impact Assessment has been carried out in relation to this project. [Note to Chairman – this is being completed and will follow shortly]. However it is considered that the implementation of the proposed Byelaws will impact on all persons without distinction and that there is no potential to cause unlawful discrimination.

12. Crime and Disorder Act 1989

- 12.1. Under Section 17 of the Crime and Disorder Act 1988, a Local Authority has a duty to “exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime and disorder in its area”. The Byelaws have been specifically designed to complement the powers available in Parliament Square itself pursuant to Part 3 of the Police Reform and Social Responsibility Act 2011. These powers enable the police and authorised officers of the local authority to give directions to persons to cease engaging in various prohibited activities or not to start such activities. This element of discretion ensures that there is a mechanism in place for people to avoid criminal liability. However, a failure to comply with such a direction is an offence.

13. Ward member consultation

- 13.1. Ward members have been consulted on the contents of this report, although no feedback has yet been received. Any feedback received before the Committee convenes on 7 December will be presented at the meeting.

Appendices

APPENDIX 1 – City of Westminster draft Byelaws to regulate tents and other structures and sleeping equipment in designated areas near Parliament Square etc.

APPENDIX 2 – Map of proposed designated area.



CITY OF WESTMINSTER

DRAFT BYELAWS TO REGULATE TENTS AND OTHER STRUCTURES AND SLEEPING EQUIPMENT IN DESIGNATED AREAS IN THE CITY OF WESTMINSTER AND TO AMEND EXISTING BYELAWS TO ENABLE SEIZURE OF NOISE EQUIPMENT

Byelaws made under section 235 of the Local Government Act 1972 by the Council of the City of Westminster for the good rule and government of the City of Westminster and for the prevention and suppression of nuisances.

2.1. INTERPRETATION

1. In these Byelaws:

“authorised officer” means—

- (a) an employee of the Council who is authorised in writing by the Council for the purposes of these Byelaws, and
- (b) any other person who, under arrangements made with the Council (whether by that or any other person), is so authorised for the purposes of these Byelaws;

“the Council” means the Council of the City of Westminster;

a “prohibited item” means any item of a kind mentioned in Byelaw 3(2);

“Westminster Abbey” means the Collegiate Church of Saint Peter Westminster.

EXTENT

2. (1) Subject to Byelaw 2(3), Byelaws 3 to 8 shall apply to the areas of the City of Westminster designated in the Schedule and shown edged red on the plan attached to these Byelaws.
- (2) Subject to Byelaw 2(3), in the event of any discrepancy between the area designated in the Schedule and the area shown on the plan, the area shown on the plan shall be deemed to be correct and shall prevail.
- (3) Byelaws 3 to 8 shall not apply to any park which is or may be the subject of regulations under section 2(1) of the Parks Regulation (Amendment) Act 1926.

USE OF TENTS AND SLEEPING EQUIPMENT, ETC.

3. (1) A constable or authorised officer who has reasonable grounds for believing that a person is doing, or is about to do, any of the activities mentioned in Byelaw 3(2) may direct the person—
 - (a) to cease doing that activity; or
 - (b) (as the case may be) not to start doing that activity.

- (2) The activities are—
 - (a) erecting or keeping erected in any area to which Byelaws 3 to 8 apply—
 - (i) any tent; or
 - (ii) any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period;
 - (b) using any tent or other such structure in any area to which Byelaws 3 to 8 apply for the purpose of sleeping or staying in that area;
 - (c) placing or keeping in place in any area to which Byelaws 3 to 8 apply any sleeping equipment with a view to its use (whether or not by the person placing it or keeping it in place) for the purpose of sleeping overnight in that area;
 - (d) using any sleeping equipment in any area to which Byelaws 3 to 8 apply for the purpose of sleeping overnight in that area.

- (3) It is immaterial for the purposes of an activity mentioned in Byelaw 3(2)—
 - (a) in the case of an activity within Byelaw 3(2)(a) or (b) of keeping a tent or other structure erected or using a tent or similar structure, whether the tent or structure was first erected before or after the coming into force of this Byelaw;
 - (b) in the case of an activity within Byelaw 3(2)(c) or (d) of keeping in place any sleeping equipment or using any such equipment, whether the sleeping equipment was first placed before or after the coming into force of this Byelaw.

- (4) In this Byelaw “sleeping equipment” means any sleeping bag, mattress or other similar item designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping in a place.

- (5) It is an offence for a person, without reasonable excuse, to fail to comply with a direction under Byelaw 3(1).

EXEMPTIONS

4. (1) Byelaw 3 does not apply to anything done or to be done—
- (a) for police, fire and rescue authority or ambulance purposes;
 - (b) by or on behalf of a relevant authority;
 - (c) (in the case of those parts of the precincts of Westminster Abbey to which Byelaws 3 to 8 apply) by, on behalf of or with the consent of the Dean and Chapter of the Collegiate Church of Saint Peter Westminster through its Chapter Clerk;
 - (d) (in the case of those parts of the Parliamentary Estate to which Byelaws 3 to 8 apply) by, on behalf of or with the consent of the Corporate Officer of the House of Commons or the Corporate Officer of the House of Lords, as the case may be.
- (2) In Byelaw 4(1)(b) “relevant authority” means any of the following—
- (a) a Minister of the Crown or a government department;
 - (b) the Greater London Authority;
 - (c) the Council.
- (3) In Byelaw 4(1)(d) “the Parliamentary Estate” means land which does not form part of the highway and which is in the ownership or under the control of the Corporate Officer of the House of Commons or the Corporate Officer of the House of Lords.

DIRECTIONS UNDER BYELAW 3: FURTHER PROVISION

5. (1) A direction requiring a person to cease doing an activity may include a direction that the person does not start doing that activity again after having ceased it.
- (2) A direction requiring a person not to start doing an activity continues in force until—
- (a) the end of such period beginning with the day on which the direction is given as may be specified by the constable or authorised officer giving the direction; or
 - (b) if no such period is specified, the end of the period of 90 days beginning with the day on which the direction is given.
- (3) A period specified under Byelaw 5(2)(a) may not be longer than 90 days.
- (4) A direction—
- (a) may be given orally;

- (b) may be given to any person individually or to two or more persons together; and
 - (c) may be withdrawn or varied by the person who gave it.
- (5) In this Byelaw, “direction” means a direction given under Byelaw 3(1).

SEIZURE OF PROHIBITED ITEMS

6. (1) A constable or authorised officer may seize and retain a prohibited item that is on any land in any area to which Byelaws 3 to 8 apply if it appears to that constable or officer that the item is being, or has been, used in connection with the commission of an offence under Byelaw 3(5).
- (2) A constable may seize and retain a prohibited item that is on any street or other public place in the City of Westminster and outside any area to which Byelaws 3 to 8 apply if it appears to the constable that the item has been used in connection with the commission of an offence under Byelaw 3(5).
- (3) A constable may use reasonable force, if necessary, in exercising a power of seizure under this Byelaw.
- (4) If no proceedings are commenced for an offence under Byelaw 3 against the person from whom an item was seized under this Byelaw before the end of the period of 28 days beginning with the day on which the item was seized, the item must be returned to the person from whom it was seized.
- (5) If proceedings are commenced against the person from whom an item was seized under this Byelaw for an offence under Byelaw 3(5) before the end of the period of 28 days mentioned in Byelaw 6(4), and the item has not been returned before the proceedings are commenced, and on the conclusion of those proceedings—
- (a) the item has not been returned; and
 - (b) no award is made of costs to be paid by the accused to the Council,
- the item must be returned to the person from whom it was seized.
- (6) If proceedings are commenced against the person for an offence under Byelaw 3(5) before the end of the period of 28 days mentioned in Byelaw 6(4), and the item has not been returned before the proceedings are commenced, and on the conclusion of those proceedings—
- (a) the item has not been returned; and
 - (b) an award is made of costs to be paid by the accused to the Council,
- the item must be returned to the person from whom it was seized when the costs have been paid.

- (7) If it is not possible to return an item under Byelaws 6(4) to (6) because the name or address of the person from whom it was seized is not known—
- (a) the item may be returned to any person appearing to have rights in the property who has come forward to claim it; or
 - (b) if there is no such person, the item may be disposed of or destroyed at any time after the end of the period of 90 days beginning with the day on which the item was seized.
- (8) Byelaws 6(5) to (7) do not apply if a court makes an order under Byelaw 7(1) for the forfeiture of the item.
- (9) The references in Byelaws 6(1) and (2) to an item that is “on” any land, street or other public place include references to an item that is in the possession of a person who is on any such land, street or other public place.

FORFEITURE OF PROHIBITED ITEMS

7. (1) The court may, on the conviction of a person of an offence under Byelaw 3(5), make an order providing for the forfeiture of any prohibited item that was used in the commission of the offence.
- (2) The power of the court to make an order under Byelaw 7(1) is in addition to the court’s power to impose a fine under Byelaw 8.

PENALTY

8. Any person offending against Byelaw 3(5) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

AMENDMENT OF BYELAWS

9. The Byelaws for the Good Rule and Government of the City of Westminster (No. 2) made on 20th July 2001 are amended by the insertion of the following Byelaws after Byelaw 4—

“SEIZURE OF NOISE EQUIPMENT

- 4A. (1) A constable or authorised officer may seize and retain a prohibited item that is in a street or public place to which these Byelaws apply if it appears to that constable or officer that the item is being, or has been, used in connection with the commission of an offence under Byelaw 3.
- (2) A constable may use reasonable force, if necessary, in exercising a power of seizure under this Byelaw.

- (3) If no proceedings are commenced for an offence under Byelaw 3 against the person from whom an item was seized under this Byelaw before the end of the period of 28 days beginning with the day on which the item was seized, the item must be returned to the person from whom it was seized.
- (4) If proceedings are commenced against the person from whom an item was seized under this Byelaw for an offence under Byelaw 3 before the end of the period of 28 days mentioned in Byelaw 4A(3), and on the conclusion of those proceedings —
 - (a) the item has not been returned; and
 - (b) no award is made of costs to be paid by the accused to the Council,the item must be returned to the person from whom it was seized.
- (5) If proceedings are commenced against the person from whom an item was seized under this Byelaw for an offence under Byelaw 3 before the end of the period of 28 days mentioned in Byelaw 4A(3), and on conclusion of those proceedings —
 - (a) the item has not been returned; and
 - (b) an award is made of costs to be paid by the accused to the Council,the item must be returned to the person from whom it was seized when the costs have been paid.
- (6) If it is not possible to return an item under Byelaws 4A(3) to (5) because the name or address of the person from whom it was seized is not known—
 - (a) the item may be returned to any other person appearing to have rights in the property who has come forward to claim it; or
 - (b) if there is no such person, the item may be disposed of or destroyed at any time after the end of the period of 90 days beginning with the day on which the item was seized.
- (7) Byelaws 4A(4) to (6) do not apply if a court makes an order under Byelaw 4B(1) for the forfeiture of the item.
- (8) The references in Byelaw 4A(1) to an item that is in a street or public place include references to an item that is in the possession of a person who is in any such street or public place.
- (9) In this Byelaw, “prohibited item” means an item of any kind mentioned in Byelaws 3(b) or (c).

FORFEITURE OF NOISE EQUIPMENT

- 4B. (1) The court may, on the conviction of a person of an offence under Byelaw 3, make an order providing for the forfeiture of any prohibited item (within the meaning given by Byelaw 4A(9)) that was used in the commission of the offence.
- (2) The power of the court to make an order under Byelaw 4B(1) is in addition to the court's power to impose a fine under Byelaw 6.”.

hTHE COMMON SEAL OF WESTMINSTER

CITY COUNCIL was hereunto affixed

This day of 2012

in the presence of:

Peter Large

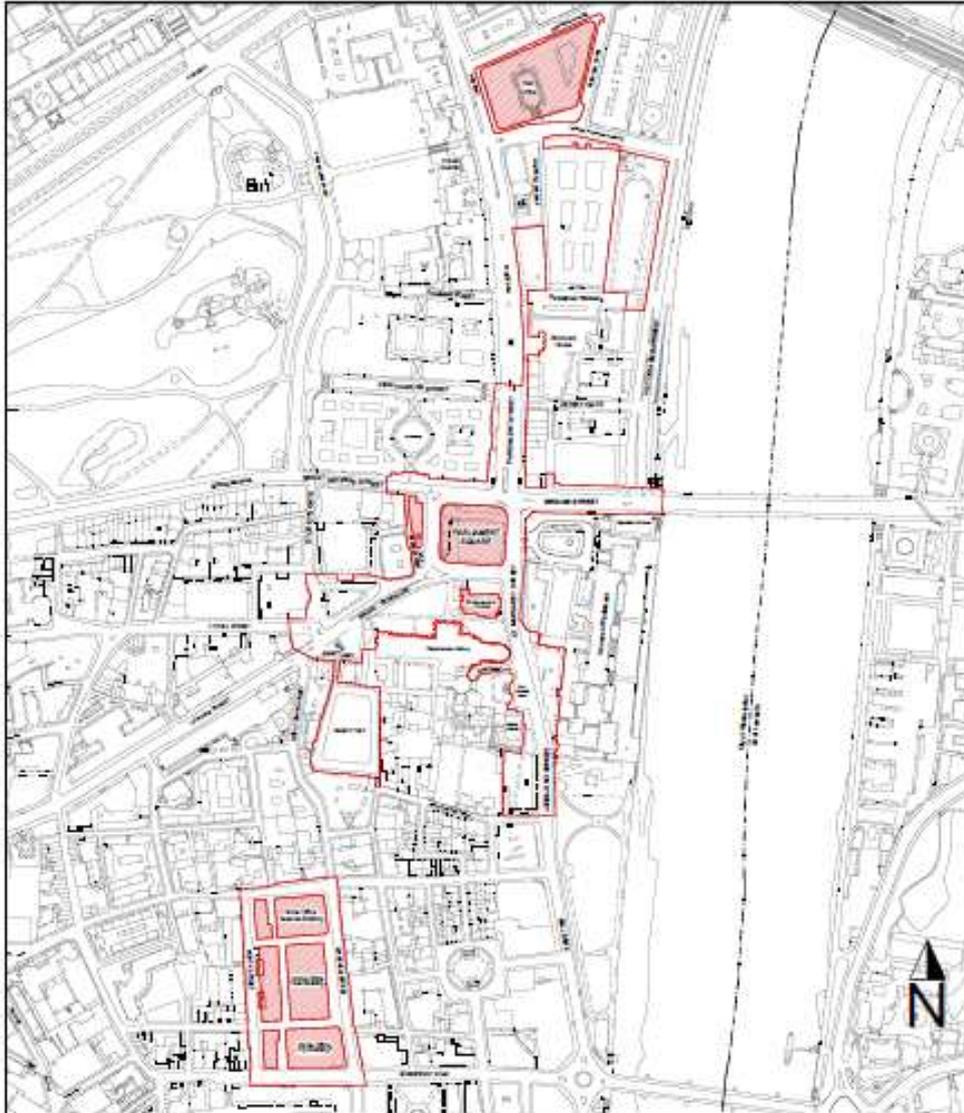
Head of Legal Services

SCHEDULE

The designated areas for the purposes of Byelaw 2 are:

- (a) those parts of Parliament Square which are outside the controlled area of Parliament Square (within the meaning given by section 142(1) of the Police Reform and Social Responsibility Act 2011),
- (b) Little George Street,
- (c) part of Great George Street,
- (d) Broad Sanctuary,
- (e) part of Storey's Gate,
- (f) the paved and grassed area to the front of the Queen Elizabeth II Conference Centre,
- (g) part of Tothill Street,
- (h) Monck Street,
- (i) Marsham Street between its junctions with Great Peter Street and Horseferry Road,
- (j) Horseferry Road between its junctions with Monck Street and Marsham Street,
- (k) the paved and grassed areas not comprising highway adjoining the constituent buildings of 2 Marsham Street,
- (l) parts of the precincts of Westminster Abbey (including Dean's Yard and the Sanctuary),
- (m) Abingdon Street Garden and its pathways, being the garden constructed on the sites of properties formerly known as 18-28 (both inclusive) Abingdon Street, London SW1,
- (n) Old Palace Yard,
- (o) part of Abingdon Street,
- (p) Bridge Street,
- (q) part of Canon Row,
- (r) Parliament Street,
- (s) the paved area to the front of 79 Whitehall (Richmond House),

- (t) the garden adjoining Whitehall outside the Ministry of Defence main building, known as Raleigh Green,
- (u) the footway of Whitehall adjoining—
 - (i) Richmond House,
 - (ii) the paved area described in paragraph (s),
 - (iii) Richmond Terrace,
 - (iv) the Ministry of Defence main building, and
 - (v) Raleigh Green,
- (v) the footways of Whitehall, Whitehall Place, Whitehall Court and Horseguards Avenue adjoining the Old War Office building,
- (w) the paved area to the front of the Ministry of Defence main building adjoining Horseguards Avenue and the footway of Horseguards Avenue adjoining that paved area,
- (x) the footway of Victoria Embankment and the gardens known as Embankment Gardens (and their pathways) adjoining the Ministry of Defence main building,
- (y) part of Richmond Terrace adjoining Victoria Embankment.



Westminster City Council Byelaws 2012: Designated Areas

Figure 1

Built Environment City Commissioner of Transportation	Legend  Controlled Area  Excluded Areas		Scale : NOT to Scale DATE : 07.12.11 DRAWN : <i>[Signature]</i>
	<small> All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without the prior written permission of the City of Westminster. </small>		Asset File Name: M2C BYELAWS 2012

APPENDIX 4
CONSULTATION DOCUMENT AND EXPLANATORY NOTE

Date: 8th December 2011

Dear Sir/Madam

CONSULTATION ON THE INTRODUCTION OF NEW AND AMENDING BYELAWS FOR GOOD RULE AND GOVERNMENT

PROPOSAL TO PROVIDE POWERS TO AUTHORISED OFFICERS AND CONSTABLES TO DEAL WITH TENTS AND OTHER STRUCTURES IN THE PARLIAMENT SQUARE AND WHITEHALL AREA AND TO SEIZE NOISE EQUIPMENT USED IN CONTRAVENTION OF EXISTING BYELAWS THROUGHOUT THE CITY

Westminster City Council is proposing to make new Byelaws. An explanatory note together with a copy of the draft Byelaws is **appended** to this letter and the draft byelaws include a map showing the areas where most of the new Byelaws would apply.

Making Representations

The Council's solicitors, Sharpe Pritchard are assisting in the administration of the consultation exercise and written representations either in support of or against the proposals should be sent to them. Of course it will be the council who will consider those representations. If you would like to make any written representations either in support of or against our proposals, please write to:

**Westminster City Council Byelaws Consultation
c/o Sharpe Pritchard
Elizabeth House
Fulwood Place
London WC1V 6HG**

or email westminsterbyelaws@sharpepritchard.co.uk.

Please ensure that any response is **received by Sharpe Pritchard no later than 5.30pm on 13th January 2012**. It is important to note that if representations are not received by this date and time (for whatever reason) they may not be taken into account as part of this consultation process. Alternatively please complete the questionnaire attached to this letter and return it to Sharpe Pritchard, making sure it is received by the deadline.

We would welcome your opinion on all the proposals set out in the draft Byelaws. In particular, if you disagree with any of the proposals, it would be helpful if you would set out the reasons for your objection. You may also want to comment on the extent of the proposed designated area. We cannot increase the designated area without carrying out a further consultation exercise, but we can reduce the area if it is thought to be too large.

Any response to this consultation will in due course be used by officers to compile a report to Full Council (via our General Purposes Committee). If you would like your response to be treated in confidence, then for legal reasons it will not form part of a public report and will not be taken into account. We can however report on the overall number of representations that

are received either in support of or opposed to our proposals. We will assume that your response can be included in the report unless you indicate otherwise.

If you do not want to disclose either your name or your address, we will respect your wishes, and the information will be redacted. However, you need to bear in mind that your response may be given less weight or might even be excluded altogether, depending on the circumstances. However, we will still be able to use your response as part of the statistical response referred to in the previous paragraph.

Further information concerning these proposed Byelaws can be obtained by emailing **parliamentsqconsult@westminster.gov.uk** and this consultation letter and the draft byelaws can be found on the Council's website, **www.westminster.gov.uk**.

Please note, however, that any formal response to the consultation should be sent to Sharpe Pritchard, as mentioned above.

Yours faithfully,



Dr Leith Penny
Strategic Director of City Management

QUESTIONNAIRE

Please return the questionnaire by post, in person or via email so that it is received by 5.30pm on 13th January 2012 to:

**Westminster City Council Byelaws Consultation,
c/o Sharpe Pritchard,
Elizabeth House,
Fulwood Place,
London WC1V 6HG**

Email: westminsterbyelaws@sharpepritchard.co.uk

DESIGNATED AREA

Do you have any comments on the extent of the designated area within which the byelaws relating to tents, etc and sleeping equipment (and their seizure) would apply?

DIRECTIONS PROHIBITING USE OF TENTS, ETC AND SLEEPING EQUIPMENT IN THE DESIGNATED AREAS

	YES	NO
Do you agree with the proposals relating to the giving of directions prohibiting the use of tents, etc and sleeping equipment in the designated areas?		

AGREE

If you agree with the proposals relating to directions prohibiting the use of tents and sleeping equipment in the designated areas, please tell us why in the box below.

--

DISAGREE

If you disagree with the proposals relating to the use of tents and sleeping equipment in the designated areas, please tell us why in the box below.

--

SEIZURE AND FORFEITURE OF AMPLIFIED NOISE EQUIPMENT

	YES	NO
Do you agree with the proposals to allow for the seizure and forfeiture of amplified noise equipment in cases where it appears that there has been a breach of the Council's existing noise byelaws?		

AGREE

If you agree with the proposals relating to seizure and forfeiture of amplified noise equipment please tell us why in the box below.

--

DISAGREE

If you disagree with the proposals relating to seizure and forfeiture of amplified noise equipment please tell us why in the box below.

--

If you would like your response to be treated in confidence, then for legal reasons it will not form part of a public report and will not be taken into account. We can however report on the overall number of representations that are received either in support of or opposed to our proposals.

Unless you wish to remain anonymous, please complete the sections below and return this sheet with your response.

Name.....

Address.....

Date.....

CITY OF WESTMINSTER

CONSULTATION ON THE INTRODUCTION OF NEW AND AMENDING BYELAWS FOR GOOD RULE AND GOVERNMENT

EXPLANATORY NOTE

What the Byelaws would do

The draft Byelaws, if implemented, will, in defined areas near Parliament Square and Whitehall:

- enable constables and authorised officers of the Council to direct persons to cease or not start:
 - erecting or keeping erected tents or similar structures
 - using a tent or similar structure for sleeping or staying in the areas
 - placing or keeping in place any sleeping equipment with a view to its use for the purposes of sleeping overnight
- make it an offence to fail to comply with a direction of the type mentioned above
- enable constables and authorised officers of the Council to seize tents or other structures or sleeping equipment if it appears to them that they are being or have been used in connection with the commission of an offence under the Byelaws
- enable the court to forfeit a seized item on conviction for an offence under the Byelaws

The Byelaws would also amend the Council's existing Byelaws for Good Rule and Government⁵ so as to enable constables and authorised officers of the Council to seize noise equipment if it appears to them that it is being or has been used in connection with the commission of an offence under those Byelaws of causing, permitting or making a noise which gives reasonable cause for annoyance. This power would apply throughout the City.

Background to the Parliament Square and Whitehall Provisions

The encampment on the pavement of Parliament Square that started originally with the sole protest of the late Brian Haw is well known.

Mr Haw began his protest on the pavement opposite Parliament in 2001. The area taken up by Mr Haw originally was considerably smaller than successive occupations of parts of Parliament Square that followed. Mr Haw did not originally use a tent, although he did maintain his occupation for 24 hours a day almost continuously until he fell ill. He died earlier this year.

In 2002, the Council applied for an injunction that Mr Haw cease what it considered to be the obstruction of the highway caused by him and to remove his placards and other paraphernalia. In his judgment of 4th October 2002, Mr Justice Gray found against the Council on the basis that the obstruction caused by Mr Haw was not unreasonable, taking

⁵ See <http://tinyurl.com/6muy6t2>

into account the duration, place, purpose and effect of the obstruction, as well as the fact that Mr Haw was exercising a right under Article 10 of the European Convention on Human Rights (right of freedom of expression).

The Serious Organised Crime and Police Act 2005 contained provisions which made it an offence to demonstrate without authorisation in the vicinity of Parliament and enabled the police to impose conditions on demonstrators. At present, those provisions remain in force, but they are soon to be repealed (see later).

Over time, the encampment at Parliament Square began to grow, and at its height in 2010, consisted of what was known as “Democracy Village” which took up a large part of Parliament Square Gardens. The Mayor of London (who is responsible for the Gardens) successfully took possession proceedings and obtained an injunction against the occupants of the Gardens, and subsequently erected an unsightly fence, which remains in place, to keep people out. The fence remains in place today. A continuing feature of the encampments and other protests in the Square has been the use of megaphones and other noise amplification equipment.

There remain a number of tents on the pavement opposite Parliament to the east of the gardens, and opposite St Margaret’s Church and Westminster Abbey to the south.

The Police Reform and Social Responsibility Act 2011 (“PRSRA 2011”)

In order to deal with the continuing issue of the encampment, the threat of a re-occupation of the Gardens and the continued use of megaphones in Parliament Square, Parliament passed Part 3 of PRSRA 2011. When brought into force (expected before the end of 2011) it will repeal the provisions in the Serious Organised Crime and Police Act 2005 and replace them with provisions which are in most parts duplicated in the draft Byelaws.

Part 3 of PRSRA 2011 gives constables and authorised officers of the Council similar powers to give directions and seize articles as are contemplated in the Byelaws (the main difference being that the Byelaws do not provide a power to give directions in relation to the use of noise equipment whereas the Act does). It only applies to the gardens of Parliament Square and the pavements that immediately adjoin them.

Justification for the Byelaws

The main issues which the Council are seeking to address are displacement of the existing encampment and the increasing threat of new encampments appearing on highways and other public places at or near the Square and the use of megaphones and other noise equipment in other places in the City.

Dealing first with amplified noise equipment, it is already an offence under the Council’s existing byelaws to use noise equipment to the annoyance of others in public places in the city. The problems which those byelaws are intended to address are not restricted to the Parliament Square area. For example, the Council has encountered problems from amplified noise in public spaces in the West End, including those parts of the Piazza at Covent Garden which are public highway,

Dealing with tents, etc and sleeping equipment, as mentioned above, Part 3 of PRSRA 2011 is limited in its extent. Assuming that the new powers to give directions under the PRSRA

2011 are exercised successfully, the Council fears that the occupiers of the current encampment will simply move to a nearby area.

The erection of tents on the highway and other public places in an urban setting is a relatively new phenomenon and it is clear that it is becoming more prevalent. For example, as is well known, there is a large encampment at St Paul's Cathedral. The Council fears that the area in and around Parliament Square and Whitehall will become attractive to more of these encampments. There is a particular fear that in the light of what happened at St Paul's, a similar new encampment could appear in the precincts of Westminster Abbey.

The Council is anxious to safeguard the interests of users of the highway and the amenity of the Parliament Square and Whitehall area. The area includes part of the UNESCO designated World Heritage Site of Westminster Palace, Westminster Abbey and St Margaret's Church, and contains a significant number of other listed buildings.

The Council does not wish to prevent legitimate protest. That is why the Byelaws have been carefully drawn so that they are very similar to the relevant provisions in PRSRA 2011, specifically dealing only with the use of tents, other structures and sleeping equipment.

The situation has been the subject of a number of debates in Parliament, in which the majority of those speaking have expressed their dissatisfaction with the ongoing situation.

It should also be noted that the purpose of these byelaws is not to control rough sleeping. It is to deal with semi-permanent and permanent encampments. Earlier in 2011, the council consulted on byelaws which were intended to deal with rough sleeping, in different areas of the city from those that are the subject of this current consultation exercise. Those draft byelaws were different in their drafting and in their intended purpose.

Geographical extent of the Byelaws

The extent of the application of the proposed Byelaws that deal with tents, other structures and sleeping equipment is shown on the map that is attached to them. The Council has been careful to draw the area as tightly as possible whilst at the same time ensuring that the objects of the Byelaws, and in particular the prevention of displacement, are met.

The tents and sleeping equipment Byelaws will not extend to any of the Royal Parks, which are subject to regulation by the Secretary of State. That explains why Victoria Tower Gardens and a small area around the Jewel Tower and the King George V memorial at Abingdon Street are not included in the area to be covered by the Byelaws. Canning Green is also a Royal Park and is therefore not included. Abingdon Street Garden is listed in the relevant Royal Parks Regulations, but draft regulations currently before Parliament will have the effect of removing the Gardens from that list, which explains why they are included within the scope of the Byelaws.

Part of the precincts of Westminster Abbey (including the Sanctuary) are included in the area to be covered by the Byelaws.

The Byelaw which would enable constables and authorised officers to seize amplified noise equipment would apply to the whole of the city. As mentioned above, problems of this nature are encountered in various parts of the city.

Other options considered

Enforce existing law relating to obstruction of the highway

Although in theory the placing of any object on the highway is, on the face of it, an obstruction of the highway, each case will depend on its specific facts. Not every case brought will lead to success, as the Council found in the original proceedings against Mr Haw. In many cases (for example the placing of advertising boards on the highway) the Council has to make a judgment as to whether the taking of enforcement action by removing the offending article, seeking an injunction, or taking out a prosecution for wilful obstruction will lead to success in the courts. It can be very difficult to predict the outcome.

Added to that, Parliament itself, by passing Part 3 of PRSRA 2011 has acknowledged that the law relating to obstruction of the highway is inadequate when it comes to issues as regards the pavement immediately surrounding the gardens. The Council would argue that the situation is no different in the other areas of highway covered by the Byelaws.

A further reason why highway obstruction powers are inadequate is that not all the land included in the scope of the Byelaws is public highway. For example, the Abbey precincts are not highway.

Also, it must be emphasised that it is not just the element of obstruction that is the cause of concern, but also the effect on the appearance of the area.

Enforce existing law relating to noise nuisance etc

Local authorities are under a duty under the Environmental Protection Act 1990 to take enforcement action in cases where they are satisfied that a statutory nuisance exists or is likely to arise or recur.

The Environmental Protection Act 1990 applies to (a) noise emitted from premises so as to be prejudicial to health or a nuisance noise and (b) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street. In the case of (b), that enables an abatement notice to be served in respect of any use of a loudspeaker or loudhailer on any streets within Westminster. However, that particular provision does not apply to noise made by a political demonstration or a demonstration supporting or opposing a campaign or cause.

As with the issue of tents and sleeping equipment, Parliament itself, by passing Part 3 of PRSRA 2011 has acknowledged that the law relating to statutory nuisance is insufficient to deal with the issue as regards the pavement immediately surrounding Parliament Square Gardens, and by implication that the exemption mentioned above for political demonstrations should be qualified to some extent.

The Council could attempt to prosecute offenders against the existing Byelaws relating to noise in streets and other public places (and in respect of which there is no exemption for political demonstrations). But the main problem with that is that it does not enable authorised officers of the council to stop the annoyance being caused, which the power of seizure would.

Do nothing or delay acting

Some may consider it premature to make Byelaws when Part 3 of PRSRA 2011 has not been tested yet. However, the Council takes the view that the risk of the existing tents being simply moved across the road, and the risk of new encampments of the sort seen at St. Paul's are serious enough to justify pre-emptive action. This is borne out to an extent by the swiftness with which the encampment at St Paul's was established and grew.

The Council believes that the opportunity to safeguard against displacement activity in particular must be taken as soon as possible. Delaying it or not doing anything at all is, in the Council's view, likely to result in displacement and the continuation of the problems that the PRSRA are intended to address, including noise problems.

This accords with the view of the Home Office Minister Lord Henley who in a written answer on 15 November 2011 said "[PRSRA 2011] will allow Westminster City Council to attach the power of seizure to their by-laws to deal with any displacement activity that results from clearing Parliament Square. We are working with Westminster Council, the Greater London Authority and the Metropolitan Police Service to ensure that there are plans in place to implement the new legislation as soon as possible".



EQUALITY IMPACT ASSESSMENT

The council has a statutory duty to consider the impact of its decisions on age, disability, gender reassignment, pregnancy & maternity, race, religion or belief, and Sex (gender) and sexual orientation.

The council also has a duty to foster good relations between different groups of people and to promote equality of opportunity.

Completing an EIA is the simplest way to demonstrate that the Council has considered the equality impacts of its decisions and it reduces the risk of legal challenge. EIAs should be carried out at the earliest stages of policy development or a service review, and then updated as the policy or review develops. EIAs must be undertaken when it is possible for the findings to inform the final decision. Keep all versions of your EIA. An EIA should be finalised once a final decision is taken.

When you should undertake an EIA:

- You are making changes that will affect front-line services
- You are reducing the budget of a service, which will affect front-line services
- You are changing the way services are funded and this may impact the quality of the service and who can access it
- You are making a decision that could have a different impact on different groups of people
- You are making staff redundant or changing their roles (particularly if it impacts on frontline services).
- EIAs also need to be undertaken on how a policy is implemented even if it has been developed by central government (for example cuts to grant funding).

Who should undertake the EIA:

- The person who is making the decision or advising the decision-maker

Guidance and tools for completing EIAs are available on the WIRE:

<http://rewire/supportunits/policyplanningandperformance/Pages/Equalities.aspx>

When you have completed an EIA, please send the final copy to Jessica Bradford (PPP): jbradford@westminster.gov.uk

From April 2011, all EIAs will be published on the council's website.

SEB will monitor compliance with the requirement to complete EIAs.

SECTION 1: DETAILS OF EQUALITY ANALYSIS

<p>1.1</p>	<p>Title</p> <p>The making of new Byelaws to provide powers to authorised officers and constables to deal with tents and other structures in a designated area surrounding Parliament Square. The Byelaws will also amend existing Byelaws which control the use of amplified noise equipment so as to enable the seizure and forfeiture of that equipment when an offence is committed in breach of those Byelaws.</p>
<p>1.2</p>	<p>What are you analysing?</p> <ul style="list-style-type: none"> • What is the purpose of the policy/project/activity/strategy? • In what context will it operate? • Who is it intended to benefit? • What results are intended? • Why is it needed?
	<p>Activity</p> <p>Under the Local Government Act 1972, local authorities are empowered to make their own Byelaws for Good Rule and Government and the suppression of nuisances. The City Council now proposes to make new Byelaws to prohibit the use of tents and sleeping equipment in a designated area surrounding Parliament Square and to amend existing Byelaws which control the use of amplified noise equipment, so as to enable the seizure and forfeiture of that equipment when an offence is committed in breach of those Byelaws.</p> <p>Purpose</p> <p>The City Council recognises all individuals’ right to protest peacefully, in accordance with the European Convention of Human Rights (ECHR) and other legislation. However, under certain circumstances the extent and manner of such protest can have a disproportionate effect on amenity and the rights of the general public to the peaceable enjoyment of the public realm.</p> <p>Parliament Square and the surrounding area incorporates some of Westminster’s most iconic sites. In a situation that has developed and persisted over several years, groups of individuals have settled as a round-the-clock presence in the Parliament Square area, carrying out their protests whilst living in permanent encampments. A legal framework is being established to manage the issue of encampments in the Parliament Square area. The framework is aimed at preventing the area from being taken over exclusively by individuals or groups, ensuring that it remains available to all (including demonstrators and protestors) as a public space. The legal framework centres around the Police Reform and Social Responsibility Act 2011 (PRSRA), which received royal assent earlier this year.</p> <p>There are a number of different authorities with responsibility for managing different parts of Parliament Square and the surrounding area, including the Greater London Authority (GLA), Royal Parks, and Westminster City Council (WCC). These bodies are working in partnership to develop individual but consistent regulations and enforcement protocols, complementary to the PRSRA, which will apply to the areas for which they are each responsible. In this way each authority will make its contribution to the overall management of the area.</p> <p>Context</p> <p>As previously stated, the new Westminster Byelaws are proposed in the context of a wider legal framework, at the centre of which sits the PRSRA. The Act enables enforcement against the use of tents or sleeping equipment and amplified noise equipment in Parliament Square Gardens and on the immediately adjacent footways. The proposed Westminster Byelaws have been drafted to closely reflect the provisions of the PRSRA, in order that the City Council may enforce similar regulations on the land it manages within the surrounding area and also certain areas of private land.</p>

	<p>This means that while the designated area for the proposed Byelaws is obviously specific to the spaces managed by WCC and the specific areas of private land identified in the Schedule to the Byelaws, the provisions themselves are largely based on those contained within the PRSRA, which have been passed by Parliament and have been subject to their own full Equalities Impact Assessment, undertaken by the Home Office.</p>	
1.3	Details of the lead person completing the EIA	
	(i) Full Name:	Rebecca Fuhr
	(ii) Position:	Commissioning Manager, City Management
	(iii) Unit:	City Management Commissioning Unit
	(iii) Contact Details:	rfuhr@westminster.gov.uk
1.4	Date sent to PPP	
	Dec 2011	
1.5	Version number and date of update	
	Version 1 (07.12.11)	
1.6	Date of publication	
	7 Dec 2011	

SECTION 2: EQUALITY ANALYSIS

2.1	If you are planning changes to a current service, which customers from the protected groups are using the service currently?
	<p>Introduction of the proposed new Byelaws would not constitute a change to an existing service per se. Rather it is an amendment to the City Council's powers, enabling it to take enforcement action in respect of using prohibited equipment within designated areas around Parliament Square.</p> <p>For full analysis of impact of these changes on protected groups, please see section 2.6.</p>
2.2	Are there any equality groups that are overrepresented in the monitoring information relative to their size of the population? <i>If so, this could indicate that the proposal may have a disproportionate impact on this group even if it is a universal service. Information about Westminster's population is on the Equalities page on the WIRE.</i>
	Please see section 2.6
2.3	Are there any equality groups that are underrepresented in the monitoring information relative to their size of the population? <i>If so, this could indicate that the service may not be accessible to all groups or there may be some form of direct or indirect discrimination occurring.</i>
	Please see section 2.6

2.4 What other evidence can you use to assess impact? For example:

- Results of consultation or engagement activity
- Analysis of enquiries or complaints
- Benchmarking monitoring information with other local authorities
- National research

If you do not have enough evidence you may need to take steps to fill in your information gaps – for example meeting with stakeholders, conducting surveys etc (the amount of evidence you need should be proportionate to what it is you are assessing. For example, changes to the eligibility for social care required a substantial consultation, as well as assessment of the numbers of people affected. However, a change to the frequency of bin collections will require less evidence to effectively assess impact).

The provisions of the PRSRA, upon which these proposed Byelaws are modelled, were of course subject to full consultation, parliamentary scrutiny and impact assessment as part of the legislative process.

In line with the standard process for making new Byelaws for Good Rule and Government, these proposals will be subject to a consultation process, whereby local residents, businesses, landowners and other interested parties will be asked for their views. This will include consultation on the proposed amendment to existing Byelaws so as to allow the seizure and forfeiture of amplified noise equipment which is used in breach of those Byelaws. The draft Byelaws will undergo such amendments as are appropriate through the consultation process.

By ensuring the pavements are kept clear of encampments, the proposed changes will prevent adverse impact on public realm access for pedestrians within the designated area. This effect will be particularly felt by those with reduced mobility (e.g. wheelchair users, people with prams etc). There is evidence to indicate that public realm access is a high priority for disabled people, which impacts heavily on their decisions about whether and where to visit in London. Live Tourism reported in 2010⁶ that only 36% of survey respondents gave positive ratings regarding clear routes / pavements in the main area they visited, with 31% giving negative ratings. Live Tourism concluded that “at present too many visitors are negative about the public realm. The aspects causing greatest concern are lack of clear routes and pavements, as well as signage and way finding”.

The report looks at the significance of the priorities of disabled visitors, with a view to delivering on the Mayor of London’s pledge to make the London 2012 Olympic and Paralympic Games the most accessible ever. The areas around Parliament Square and Westminster Abbey are among the most iconic and visited in London, and the City Council, as highways authority, has a duty under the Highways Act 1980 to assert the rights of the public to use and enjoy the highway. It also has a responsibility to prevent, as far as possible, obstruction of the highway. The City Council prioritises access for those with particular mobility needs, and has articulated its commitment to developing and improving the public realm in order to secure “the ability of all people, including elderly and disabled people, those with young children and those carrying luggage and shopping, to reach places and facilities, and to move around and use those places and facilities.”⁷

The key aim of making the proposed new Byelaws is to ensure that the areas around Parliament Square can be accessed and enjoyed by all. By ensuring pavement space in the area is not occupied by encampments, the proposed Byelaws will support those with particular mobility needs to navigate the public realm in this hugely popular area.

⁶ Live Tourism Report to the London Development Agency, February 2010. Research into views of disabled visitors to London, commissioned in September 2009 by the LDA in partnership with the Greater London Authority (GLA) and the London Organising Committee for the Olympic Games (LOCOG).

⁷ Westminster City Council Core Strategy, part of the Local Development Framework, adopted in January 2011.

<p>2.5</p>	<p>Will people from all equality groups be able to access the council service in question? Think about the customer journey and whether any barriers may exist for different groups along the way (from finding out about the service, at the access points, when receiving the service etc). <i>Separate guidance on identifying barriers is available on the WIRE.</i></p>
	<p>Please see sections 2.4 and 2.6.</p>
<p>2.6</p>	<p>What negative impacts or disadvantage could stem from the changes you are proposing on people from the different groups? Could any part of the policy discriminate unlawfully (this includes direct & indirect discrimination, victimisation and harassment)? <i>If there is any discrimination the action must stop immediately and advice sought.</i></p>
	<p>Representation of different groups Available data indicates that the right to protest is not exercised substantively more by any particular group or community⁸. People protest in response to issues of the day about which they feel personally passionate, and the demographic of those involved in demonstration activities will vary accordingly. As stated in the EIA for the PRSR Bill, “evidence shows that young people are more likely to feel strongly about university tuition fees, while older generations are more likely to protest about pension rights and public spending decisions”. The high profile protests at Parliament Square have historically often related to international affairs and policy. This can give rise to particular representation of specific racial, nationality or religious groups at particular times although, as stated, this varies according to the particular issues of the day.</p> <p>As stated in section 2.4, there is likely to be a positive impact on accessibility for disabled people and others with particular mobility requirements, by ensuring the highway is not obstructed by encampments,</p> <p>Human rights considerations The legal framework being put in place to manage the area around Parliament Square is aimed at preventing encampments in order to promote use of the Square and surrounding areas by all. The Byelaws are not based on any wish to interfere with people’s right to protest, and they do not prevent individuals from exercising that right. They do however avow that the erection of tents and the use of equipment specifically for staying overnight are not intrinsically bound up in that right. The provisions therefore neither prevent nor put a time limit on any demonstration – they impact on people’s ability to camp in the designated area, as opposed to targeting their right to protest there.</p> <p>The power to be able to seize amplified noise equipment that is being used in breach of other Byelaws will apply to the whole of Westminster. This is also considered to be a proportionate response to problems that would otherwise be caused to other members of the public who wish to use the highway and other public places within the City without being subjected to undue nuisance and disturbance. The new powers are discretionary and no equipment will be seized if the persons using the equipment comply with any instructions that may be given to cease using it. This is not considered to have any negative impact or cause any disadvantage to any particular equality group.</p> <p>Opportunity cost If the proposed Byelaws are approved, upholding and ensuring compliance with the new regulations will be added to the range of enforcement responsibilities carried out by the</p>

⁸ Full Equality Impact Assessment for ‘New measures on Parliament Square Garden and the surrounding area in the Police Reform and Social Responsibility Bill’, Public Order Unit, Home Office, April 2011.

	<p>Westminster Wardens service. This will carry a small opportunity cost for the service, however it is not expected that this would impact particularly on any of the community groups supported by the Warden's' existing work.</p> <p>Overall Findings In line with the Police Reform and Social Responsibility Act and other elements of the developing legal framework, the proposed Westminster Byelaws are intended for the overall benefit of all those who wish to use the area – be they members of the public, visitors enjoying the local iconic sites, or protestors – without distinction. The changes being proposed through the making of these new Byelaws will therefore impact on all groups equally, with no inherent risk of unlawful discrimination.</p>
<p>2.7</p>	<p>Is there anything you can do to promote equality of opportunity? This means the need to:</p> <ul style="list-style-type: none"> • Remove or minimise disadvantages suffered by equality groups • Take steps to meet the needs of equality groups • Encourage equality groups to participate in public life or any other activity where participation is disproportionately low • Consider if there is a need to treat disabled people differently, including more favourable treatment where necessary <p>Is there anything you can do to foster good relations between people who share a protected characteristic and those who do not? This means:</p> <ul style="list-style-type: none"> • Tackle prejudice • Promote understanding
	<p>Westminster Abbey provisions In the development of the proposed Byelaws, the City Council has given particular consideration to how the land around Westminster Abbey will be protected. In the event that encampments displaced from the central island seek alternative locations in the vicinity, the land around the Abbey would be in a particularly vulnerable position, offering as it does wide expanses of available space within direct line of sight of Parliament Square.</p> <p>Without inclusion in the City Council's proposed Byelaws, the Abbey would have no powers other than those of a private land owner to manage this likely influx. The Abbey-owned land to the front of Westminster Abbey along with Dean's Yard to the rear, have therefore been included in the designated area for the proposed Byelaws. Provisions have been built into the draft Byelaws enabling Westminster City Council's authorised officers to enforce on this land on the Abbey's behalf, although this has been done in a way that allows individuals to carry out activities that would normally be considered to be contrary to the proposed Byelaws if they are doing so with the express permission of the Abbey itself. This allows for organised vigils or other such activities which the Abbey may wish to accommodate.</p> <p>By taking the particular needs of the Abbey and those that use it into account, the City Council has ensured that this faith group are in no way disadvantaged by the proposed Byelaws. As stated, without specific support for their enforcement position, there is a risk that the Abbey would be particularly vulnerable to encampment resulting from potential displacement (in the wake of enforcement against encampments elsewhere in the area). Inclusion in Westminster's proposed Byelaws, in close consultation with the Abbey itself, protects them from this potentially negative impact. Meanwhile, flexibility is afforded to the Abbey and those that use it through the addition of provisions allowing express consent to be granted.</p>
<p>2.8</p>	<p>Are there changes proposed in related policy areas or services? How are you taking into account the combined impact of these changes? <i>Small changes in a policy area may cause some disadvantage, but the cumulative effect of changes in</i></p>

	<p><i>related areas could have a significant impact. A separate EIA will need to be undertaken where a number of changes are planned in a service area or where multiple changes are planned in different service areas that could impact on an equality group (for example changes in adult services, children's service, and transport/public realm changes could lead to a significant impact on disabled people, which may not be identified by looking at the changes individually)</i></p>								
	<p>As stated, the proposed Byelaws will operate within a wider legal framework, the overall aim of which is to ensure the Parliament Square area is available for all to enjoy.</p>								
<p>2.9</p>	<p>Considering your answers above, what are the issues, barriers, impacts you have identified and what can you do to reduce any negative impacts? Also include any issues you will need to take into account as your policy develops.</p>								
	<p>None – appropriate adjustments made in respect of Westminster Abbey to mitigate risk to this community group.</p> <p>Full consultation to be undertaken as part of Byelaws making process – any amendments that are appropriate will be made.</p> <p>Also note prevention of adverse effect on accessibility - please see section 2.4</p> <p>No other equalities impact concerns.</p>								
<p>2.10</p>	<p>Now you have considered the potential or actual effect on equality, what action are you taking now? Document the reasons for your decision.</p> <table border="1" data-bbox="252 1122 1513 1715"> <tr> <td data-bbox="252 1122 707 1305"> <p>1. No major change (no impacts identified)</p> </td> <td data-bbox="707 1122 1513 1305"> <p>Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination and you have taken all appropriate steps to advance equality & foster good relations between groups.</p> </td> </tr> <tr> <td data-bbox="252 1305 707 1417"> <p>2. Adjust the policy</p> </td> <td data-bbox="707 1305 1513 1417"> <p>You will take steps to remove barriers or to better advance equality.</p> </td> </tr> <tr> <td data-bbox="252 1417 707 1570"> <p>3. Continue the policy (impacts identified)</p> </td> <td data-bbox="707 1417 1513 1570"> <p>You will adopt your proposal, despite any adverse effect provided you are satisfied that it does not unlawfully discriminate and it is justified.</p> </td> </tr> <tr> <td data-bbox="252 1570 707 1715"> <p>4. Stop and remove the policy</p> </td> <td data-bbox="707 1570 1513 1715"> <p>There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminating.</p> </td> </tr> </table>	<p>1. No major change (no impacts identified)</p>	<p>Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination and you have taken all appropriate steps to advance equality & foster good relations between groups.</p>	<p>2. Adjust the policy</p>	<p>You will take steps to remove barriers or to better advance equality.</p>	<p>3. Continue the policy (impacts identified)</p>	<p>You will adopt your proposal, despite any adverse effect provided you are satisfied that it does not unlawfully discriminate and it is justified.</p>	<p>4. Stop and remove the policy</p>	<p>There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminating.</p>
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<p>2. Adjust the policy</p>	<p>You will take steps to remove barriers or to better advance equality.</p>								
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<p>4. Stop and remove the policy</p>	<p>There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminating.</p>								
	<p>1 – no potential for unlawful discrimination, all appropriate steps taken at this stage.</p> <p>Also note prevention of adverse effect on accessibility - please see section 2.4</p>								

SECTION 3: ACTION PLAN

N/A – no action plan required

3.1 Complete the action plan if you need to reduce or remove the negative impacts you have identified, take steps to foster good relations or fill data gaps. <i>Please include the action required by your team/unit, groups affected, the intended outcome of your action, resources needed, a lead person responsible for undertaking the action (inc. their department and contact details), the completion date for the action, and the relevant RAG rating: R(ed) – action not initiated, A(mber) – action initiated and in progress, G(reen) – action complete.</i> NB. Add any additional rows, if required.	Complete the action plan if you need to reduce or remove the negative impacts you have identified, take steps to foster good relations or fill data gaps.						
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	NB. Add any additional rows, if required.						
	Action Required	Groups Targeted	Intended outcome	Resources Needed	Name of Lead, Unit & Contact Details	Completion Date (DD/MM/YY)	RAG

THIS SECTION TO BE COMPLETED BY THE RELEVANT SERVICE MANAGER

SIGNATURE: ...R Fuhr.....

FULL NAME: ...Rebecca Fuhr.....

UNIT: ...City Management Commissioning

EMAIL & TELEPHONE EXT: ...rfuhr@westminster.gov.uk - x.2342.....

DATE (DD/MM/YYYY): ...7 December 2011.....